IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

SECOND APPEAL NO. 100 OF 2005

SHREE CHANDRESHWAR BHUTNATH
DEVASTHAN
Paroda, represented by its constituted Attorney
Shri Chandrakant Raut Dessai, aged 54 years,
residing at H. No. 83, Assolda, Quepem, Goa. .... Appellant

Versus

SHRI BABOY MOTIRAM VERENKAR
aged 59 years, married, businessman,
residing at Baboy Complex, Margao, Goa. .... Respondent

Shri M.S. Usgaonkar, Sr. Adv. with Shri I. Aga, Advocate for Appellant.

Shri P.S. Rao, Advocate for Respondent.

CORAM: **P.V. KAKADE, J**.

DATE: **8th August, 2006**

ORAL ORDER

This is an appeal preferred against the Judgment and Order passed by IIIrd Additional District Judge, South Goa, Margao dismissing the

present appellant's/defendant's appeal and confirming the Judgment and Order passed by the Civil Judge, Junior Division at Quepem in Regular Civil Suit No. 132/1986/B dated 21/08/2001, decreeing the suit in terms of prayer clause 'A' whereby the present appellant/defendant were permanently restrained from disturbing the possession of the respondent/plaintiff and other co-owners in respect of the suit property Surveyed under No. 169/0 of Mullem Village of Salcete taluka.

2. Perusal of the record shows that the plaintiff came with the case that he was a co-owner in possession of the suit property alongwith his family and family of one Shri Vinayak Verencar and heirs of Cashinath Verencar of property known as "Sainolem" which was predominantly paddy land and hilly area. It was alleged by the plaintiff that the right of co-ownership of the plaintiff was obstructed by the defendant Devasthan and as such suit for perpetual injunction was being filed.

3. The defendant resisted the claim of the plaintiff, inter alia, submitting that the allegations made were false and in fact the plaintiff had no right to seek perpetual injunction by way of the suit.

4. The trial court after considering the issues, on the basis of available pleadings, adjudicated suit on merits holding that the plaintiff had succeeded in proving that the suit property plus hilly portion Surveyed under No. 169/0 were in possession of the plaintiff. It was further held that the defendant failed to prove that the property of the plaintiff was not only paddy field but also consisted of hilly portion. Further it was held that Survey No. 169/0 was part and parcel of their property. Therefore the suit came to be decreed for perpetual injunction. The appeal was carried to the District Judge. The learned District Judge, on the basis of available evidence, confirmed the judgment and order recorded by the trial Court and dismissed the appeal.

Hence the present appeal.

5. At the outset, it may be noted that Mr. M.S. Usgaonkar, the learned Senior Counsel for the appellant basically pressed his claim for admission of the appeal on the ground that the learned appellate Court had not properly considered the entire evidence on record. In support of his submission, my attention was invited to para 43 of the first appellate Court's judgment wherein the learned District Judge has observed that there was no

application under Order 41 Rule 27 of the Civil Procedure Code for production of additional translation of the original document which was in Portuguese and therefore, in absence of such application, the translation of the original document could not be considered in law. In other words it was held that the evidence of the translated document could not be read on merits in order to determine the dispute for want of application under Order 41 of Rule 27 of Civil Procedure Code. In view of this particular observation, the substantial question of law is sought to be formulated on behalf of the appellant that the appellate Court was in error for non-consideration of translation of document of grant which ought to have been considered. Also other similar questions were sought to be raised revolving around the said translation.

6. However, taking into account the arguments advanced by both the parties and considering the legal aspects concerning the issue at hand, I am of the view that the question of law sought to be raised could not be said to be a substantial question of law within the meaning of Section 100 of Civil Procedure Code. In this regard reference was made to the judgment of the Apex Court in the case of **Kondiba Dagadu Kadam *Versus* Savitribai Sopan Gujar And Ors.** (1999 3 SCC 722) wherein it is laid down that the

scope of Section 100 of Civil Procedure Code is very limited. The concurrent findings of facts howsoever erroneous, could not be disturbed by the High Court in exercise of the powers under Section 100 of the Civil Procedure Code. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact being the first appellate court. The High Court could not substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.

7. In the present case, what the lower Appellate Court has done is that it has refused to read the document of translation for want of leave of the Court for production of such translation of original document under Order 41 Rule 27 of Civil Procedure Code which in my view was the correct approach especially when it is not explained as to why such application was not made by the appellant or such leave was not sought for at the stage of pendency of the first appeal.

8. Thus, I do not find the issues sought to be raised are substantial question of law and as such I hold that there is no merit in the appeal and as such appeal stands dismissed with no order as to costs.

P.V. KAKADE, J.

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